



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2012

Ms. Susan Fillion  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2012-06476

Dear Ms. Fillion:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 457275 (C.A. File No. 12PIA0186).

The Harris County Institute of Forensic Sciences (the "institute") received a request for a specified autopsy report. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted. We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

The requestor contends, among other things, that the submitted information should be presumed public and released because the institute failed to comply with its deadlines under section 552.301 of the Government Code in requesting this decision. *See id.* §§ 552.301(a)-(b), (e), .302. Even if the requestor is correct, however, we note the law enforcement interests under section 552.108 of the Government Code of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In this instance, the institute states the Houston Police Department (the "department") asserts a law enforcement interest in the information at issue. Accordingly, we need not decide whether the institute complied with section 552.301 and will determine whether it may withhold the submitted information on behalf of the department under section 552.108.

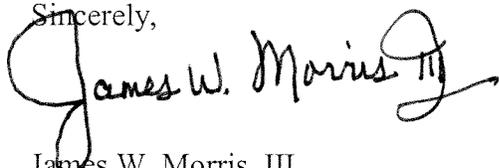
Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

The institute states, and has provided an affidavit from the department confirming, the department objects to disclosure of the submitted information because its release would interfere with a pending criminal case. Based on the institute’s representations and the department’s affidavit, we conclude the institute may withhold the submitted information on behalf of the department under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive, flowing style with a large initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 457275

Enc: Submitted documents

c: Requestor  
(w/o enclosures)